

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death;

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(c) (as amended by Joint Resolution of March 3, 1931, Public, No. 131, Seventy-first Congress, and by section 803 (a) of the Revenue Act of 1932). To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

(d) (as amended by Section 401 of the Revenue Act of 1934, c. 277, 48 Stat. 680)

(1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

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(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

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Treasury Regulations 80 (1937 ed.):

ART. 13. *Property of decedent at time of death.*—It is designed by the foregoing provision of the statute that there shall be included in the gross estate all property of the decedent, whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death, except real property situated outside the United States.

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ART 15. *Transfers during life.*—The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are sub-

ject to the tax: * * * (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see article 19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, * * *.

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ART. 19 (as amended by T. D. 4868, 1938-2 Cum. Bull. 355, 356). *Transfers with right retained to designate who shall possess or enjoy.*—The statute (section 302 (c), as amended) provides that, except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate shall embrace all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for a period not ascertainable without reference to his death, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof.

This provision of the statute covers, in the main, transfers to which also apply the provisions of certain other subdivisions of section 302. Thus, to the extent that the enjoyment of the transferred property is

subject to any change through the exercise of a power by the decedent alone or in conjunction with any other person or persons to alter, amend, revoke, or terminate, the provisions of section 302 (d), as amended, and of article 20 will apply. Or, if the decedent reserved to himself a general power of appointment and the property passed in his lifetime or by his will pursuant to the exercise of such power, the property may be required by section 302 (f), as amended, to be included in the gross estate, and in such case the provisions of article 24 will apply without regard to when such power was created.

A transfer of the kind dealt with in this article, when not also falling within the provisions of some other subdivision of section 302, requires the inclusion of the transferred property within the gross estate, if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and the right to so designate was retained by or reserved to the decedent alone for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and the right to so designate was retained by or reserved to the decedent alone or in conjunction with any other person or persons for decedent's life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for any period not ascertainable without reference to his death.

ART. 20. *Transfers with power to change the enjoyment.*—(a) *Transfers included.*—Subdivision (d) of section 302 of the Revenue Act of 1926, as amended, embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate. (See article 15.)

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(b) *Taxability.*—The property or the interest or interests therein so transferred shall be included in the gross estate if coming within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if the decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the decedent's death occurred at any time subsequent to the transfer, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

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ART. 25 (as amended by T. D. 5032, 1941-1 Cum. Bull. 427). *Taxable insurance*.—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system. Insurance receivable by beneficiaries other than the estate is considered to have been taken out by the decedent where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so taken out, even though the application was made by the decedent, if no part of the premiums or

other consideration was paid either directly or indirectly by him. Where a portion of the premiums or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been taken out by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance.

Life insurance not includible in the gross estate under the provisions of subdivision (g) of section 302 and article 26, 27, or this article of these regulations may, depending upon the facts of the particular case, be includible under some other subdivision of section 302 and the articles of these regulations pertaining thereto, such as subdivision (c) in the case of insurance taken out by the decedent prior to the date of Treasury Decision 5032 and also transferred by him prior to such date in contemplation of death.

ART. 26 (as amended by T. D. 5032, *supra*) *Insurance in favor of the estate.*—The statute requires the inclusion in the gross estate of all insurance receivable by the executor or administrator or payable to the decedent's estate, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance effected to provide funds to meet the estate tax, and any other taxes, debts, or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes, debts or charges. The full amount of the proceeds so receivable, without the benefit

of any exemption, forms a part of the gross estate, though all the premiums or other consideration wherewith the insurance was acquired may have been paid by a person other than the decedent. If the decedent procured insurance in favor of another person or corporation as collateral security for a loan or other accommodation, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death will be deductible in determining the net estate, and the interest thereon will be deductible in accordance with the provisions of article 36.

ART. 27 (as amended by T. D. 5032, *supra*) *insurance receivable by other beneficiaries*.—The amount in excess of \$40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate as follows:

(1) To the extent to which such insurance was taken out by the decedent upon his own life (see article 25) after January 10, 1941, the date of Treasury Decision 5032, and

(2) To the extent to which such insurance was taken out by the decedent upon his own life (see article 25) on or before January 10, 1941, and with respect to which the decedent possessed any of the legal incidents of ownership at any time after such date or, in the case of a decedent dying on or before such date, at the time of his death.

Legal incidents of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to

surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possesses a legal incident of ownership if his death is necessary to terminate his interest in the insurance, as for example if the proceeds would become payable to his estate, or payable as he might direct, should the beneficiary predecease him.

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